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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 JOHN W. BERRY,

9 v.

10 GREGORY DUNCAN, et al.,

11 Defendants.

No. C10-5042 FDB/KLS

ORDER DIRECTING PLAINTIFF TO
SERVE COMPLAINT AND SUMMONS

12 This civil rights action has been referred to the undersigned Magistrate Judge pursuant to
13 Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. On January 25, 2010, Plaintiff John W.
14 Berry filed a civil rights complaint and paid the filing fee of \$350.00 (Receipt # T-6867). Dkt. 1.
15 Because Mr. Berry is not proceeding *informa pauperis* in this matter, it is his obligation to serve
16 copies of the Summons and Complaint upon the named defendants.

17 Plaintiff is now directed to Rule 4 of the Federal Rules of Civil Procedure, which sets
18 forth the rules and procedure for service of the Summons and Complaint. Pursuant to Rule
19 4(m), Plaintiff must serve copies of the Summons and Complaint upon each of the named
20 Defendants within 120 days after the filing of the Complaint. Unless the Plaintiff can show good
21 cause for his failure to serve, the Court shall dismiss the action without prejudice as to each
22 defendant not served or shall extend the time for service. Fed.R.Civ.P. 4(m). Plaintiff's
23 complaint was filed on January 25, 2010. However, the court **ORDERS** that the 120 days for
24 service shall run from the date of this Order. Plaintiff is further advised as follows:
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1 **Filing and Service by Parties, Generally.** All original documents and papers submitted
2 for consideration by the Court in this case, are to be filed with the Clerk of this Court. The
3 originals of all such papers shall indicate in the upper right-hand corner the name of the
4 Magistrate Judge to whom the copies are to be delivered. The papers shall be accompanied by
5 proof that such documents have been served upon counsel for the opposing party (or upon any
6 party acting pro se). The proof shall show the day and manner of service and may be written
7 acknowledgment of service, by certificate of a member of the bar of this court, or by affidavit of
8 the person who served the papers.
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10 **Motions.** Any request for Court action shall be set forth in a motion, properly filed and
11 served. The motion shall include in its caption (immediately below the title of the motion) a
12 designation of the Friday upon which the motion is to be noted upon the court's calendar. That
13 date shall be the third Friday following filing of the motion (fourth Friday for Motions for
14 Summary Judgment). All briefs and affidavits in opposition to any motion shall be filed and
15 served not later than 4:30 p.m. on the Monday immediately preceding the Friday appointed for
16 consideration of the motion. If a party fails to file and serve timely opposition to a motion, the
17 court may deem any opposition to be without merit. The party making the motion may file, not
18 later than 4:30 p.m. on the Friday designated for consideration of the motion, a response to the
19 opposing party's briefs and affidavits.
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21 **Motions for Summary Judgment.** If one of the parties files a motion for summary
22 judgment pursuant to Federal Rules of Civil Procedure 56, the opposing party should acquaint
23 him/herself with Rule 56. Rule 56 requires a nonmoving party to submit affidavits or other
24 evidence in opposition to a motion for summary judgment if the moving party has shown the
25 absence of issues of material fact and an entitlement to judgment as a matter of law. A
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1 nonmoving party may not rest upon the mere allegations or denials of prior pleadings. Rather,
2 successful opposition to a motion for summary judgment requires the nonmoving party to set
3 forth, through affidavits or other evidence, specific facts showing a genuine issue for trial.
4 Failure by the nonmoving party to oppose a summary judgment motion or to present counter
5 evidence could result in the court accepting the moving party's evidence as the truth, and
6 entering final judgment in favor of the moving party without a full trial. *Rand v. Rowland*, 113
7 F.3d 1520 (9th Cir. 1997).
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9 **Direct Communications with District Judge or Magistrate Judge.** No direct
10 communication is to take place with the District Judge or Magistrate Judge with regard to this
11 case. All relevant information and papers are to be directed to the Clerk.

12 **Clerk's Action.** The Clerk is directed to send a copy of this Order and of the General
13 Order issued by the Magistrate Judges to Plaintiff. The Clerk is also directed to issue a summons
14 for each named Defendant and to send it to Plaintiff. The Clerk is also directed to return to
15 Plaintiff the service copies and summonses submitted by Plaintiff with his Complaint.
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17 Accordingly, it is **ORDERED**:

18 (1) Plaintiff is directed to serve the summons and complaint on the named defendants
19 within 120 days of the date of this Order.

20 (2) The Clerk is directed to issue and send a summons for each named Defendant to
21 Plaintiff. The Clerk is further directed to send to Plaintiff copies of this Order, General
22 Order, and the service copies and summonses previously submitted by Plaintiff.

23 **DATED** this 12th day of February, 2010.

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25 Karen L. Strombom
26 United States Magistrate Judge